

Exhibit A

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

JASON LYONS, ET AL.,) CA. NO. 6:17-CV-2362
PLAINTIFF,) SPARTANBURG, SC
APRIL 3, 2018

VERSUS

BAIC, INC., ET AL.,)
DEFENDANT.)

BEFORE THE HONORABLE DONALD C. COGGINS, JR.
UNITED STATES DISTRICT COURT JUDGE
MOTION HEARING

APPEARANCES:

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1 to actually go forward with the deal.

2 THE COURT: I understand.

3 MR. OVERSTREET: Does that make sense?

4 THE COURT: It does. And I apologize for getting
5 you off track.

6 MR. OVERSTREET: That's all right.

7 THE COURT: I thought while you were at that point
8 in the factual recitation, I wanted to get those couple
9 of questions out of the way.

10 MR. OVERSTREET: Yes, sir. Yes, sir. No problem.

11 THE COURT: Please proceed.

12 MR. OVERSTREET: Yes, sir.

13 With regard to the Anti-Assignment issue, Judge,
14 I will just hit that straight on and tell you our
15 position, and then I will get into the RICO arguments.
16 But with regard to the Anti-Assignment statute, that is
17 really the gravamen of what we are dealing with here.

18 The Plaintiffs did sign a document that said this
19 is not an assigned; but even setting that aside, the
20 difference between this and an actual assignment is that
21 the receiver in this case has no rights. Essentially,
22 in an assignment, when you assign a property, or you
23 assign some other tangible item to someone, the money
24 or the assets have to flow to that individual and they
25 can enforce that. It is not enforceable here, and at

1 any time the Plaintiffs can say, no, Federal Government,
2 stop sending my benefits to the Upstate Law Group, and
3 that is what all three of them did. So, it can't be
4 an assignment if the assignees still maintain control --
5 assignors -- assignees still maintain control of the
6 flow, if that makes sense, Judge.

7 Moving right along to the RICO. I will just
8 hit a couple of points about the RICO because, again, I
9 don't want to go through my entire brief, but our first
10 argument, Judge, is that the Plaintiffs haven't
11 plausibly alleged that they have been defrauded by
12 Ms. Kern-Fuller. And they have to allege fraud as to
13 sufficient facts as to each Defendant. What we have
14 here, again, not to restate it too much, but you have
15 got an agreement between the Plaintiffs and another
16 party of which all the material disclosures were made
17 and they agree with that. There is no representation or
18 no allegation that they didn't know everything, how
19 much they were getting, what it was going to cost them,
20 all of that information.

21 Now, granted, it might not sound like the best
22 deal to you and me, and you or I might never enter into
23 a deal like this, but there is no allegation that they
24 were fooled into thinking they were going to get 60
25 grand and they got 30 grand. They knew everything.

1 Jones Day in Chicago, and I would like to start out with
2 two small personal notes: First, thank you for letting
3 us appear in court; and, secondly, during the course of
4 the argument, you may see tears falling down my face
5 because I suffered an eye injury recently and it is not
6 because I am moved by the force of my own rhetoric.

7 THE COURT: Either way that is not a problem.

8 MR. DOLAN: Your Honor, first of all, I am quite
9 confident that the briefs that we submitted in this
10 matter have properly addressed the Court with all of the
11 relevant case law, and they do provide adequate guide
12 with respect to the issues that are before the Court.
13 I will try to avoid, just as my colleagues at the bar
14 are doing, rehashing all my arguments.

15 I do want to come to grips with a couple of
16 things. First of all, let me talk about the elephant
17 in the room. And the elephant in the room is the fact
18 that Ms. Kern-Fuller and Upstate Law Group are lawyers,
19 and quite naturally they have asserted that their only
20 role is to serve as lawyers here. So, if you go
21 through their brief you will see the words "only,
22 merely, just" appear quite frequent; but, Your Honor,
23 you correctly pointed out the fact that at least in
24 paragraph 46 of our complaint, we suggest that
25 Ms. Kern-Fuller and her firm have a much more

1 significant role.

2 First of all, in paragraph 46, we specifically
3 note that she advises veterans how to evade scrutiny by
4 the Department of Veteran's Affairs so that they can put
5 this money into her IOLTA account. And that kind of
6 conduct, as I think Your Honor has probably recognized,
7 goes far and beyond simply acting as an advisor, a
8 legal advisor to her clients. She is actually
9 providing information to the veterans that if it were
10 provided to them accurately, fairly, and truthfully,
11 they would not presumptively go along with it. So,
12 there is something far more significant here than simply
13 acting as a lawyer.

14 She also acts, and her firm acts, as the banker
15 for this entire transaction. The IOLTA account, as we
16 have alleged in our complaint, is, essentially, the
17 financier of the entire operation. I don't choose to
18 use the word "money laundering," but in a certain
19 sense, the money flows in the account specifically so
20 that it can avoid scrutiny by the VA, and other groups,
21 and other Federal agencies that would be concerned about
22 the evasion of the Anti-Assignment statutes, which, as
23 the Court knows, are 38 USC 5301 and 37 USC 701.

24 So, to the extent that Ms. Kern-Fuller and the
25 Upstate Law Group argument rests upon words like "just,

1 and only, and merely," those are characterizations of
2 facts. And as such they raise factual issues about the
3 scope of her involvement with these transactions. And
4 in the context of the Motion to Dismiss under Rule 12,
5 those kinds of factual issues cannot be resolved at this
6 point.

7 Let me next come to grips with an argument that
8 my brother at the bar, Mr. Overstreet, has made with
9 respect to issues about enforceability, and I believe
10 Mr. Matthews has also made a similar point. There is
11 some paradoxical suggestion here that folks are being
12 induced to enter into contracts that they can walk away
13 from without consequence. Well, Ms. Kern-Fuller can't
14 believe that because the Court can take judicial notice
15 of the fact that she has filed dozens of lawsuits
16 against veterans in order to enforce these very
17 contracts, these allegedly unenforceable contracts.

18 I will state to the Court with full candor that
19 I am absolutely going to quote the concept that these
20 contracts are not enforceable in future arguments, not
21 only in this forum, but in other forums around the
22 United States. So, I thank my brothers at the bar for
23 that.

24 So, come back to where we were, Ms. Kern-Fuller
25 and her law firm not only act as bankers, they vetted

1 persons in order to determine whether or not they met
2 the criteria that the Defendants have established; she
3 acted as an advisor, and she helped with evasion of
4 Federal law. This goes far beyond simply acting,
5 merely acting, just acting as an attorney. In any
6 event, those fact issues cannot be resolved at this
7 point.

8 So, let me talk a little bit more about the RICO
9 issue. It is rather surprising, frankly, to hear
10 counsel stand up here and say that there were no
11 misrepresentations, that folks knew what they were
12 getting, and that folks fully understand what their
13 legal rights were. That is simply not true, Your
14 Honor. There are multiple forms of forum, multiple
15 forms of fraud. For example, there are frauds by
16 admission, not only commission; not only affirmative
17 misstatements, but omission. There are multiple banking
18 statutes, for example, that prescribe prohibitively high
19 interest rates. The interest rates that are actually
20 associated with these transactions, the imputed interest
21 rates, are not disclosed to the veterans, and this is in
22 violation of multiple Federal statutes.

23 Now, they are going to come back and tell the
24 Court, well, these are not loans, these are not
25 loans, but what are they then? They are assignments,

1 the very thing that the Federal law prohibits. Do they
2 tell the veterans that these contracts that they are
3 entering into are void from -- void *ab initio*? They
4 don't make that disclosure either. Do they disclose to
5 any of the people involved in these transactions, either
6 on the veteran's side or on the buyer's side, that they
7 have been held to violate securities laws in eight
8 different states? A material fact that veterans would
9 certainly want to hear about in connection with entering
10 into these transactions.

11 We have established the existence of an
12 enterprise, or at least we have adequately pled it.
13 The only thing we need to plead at this point is
14 something that seems plausible.

15 We have established a predicate pattern of acts,
16 including, but not limited to, wire fraud in connection
17 with the various transmissions of these documents
18 through interstate commerce, to and from
19 Ms. Kern-Fuller's law firm. And we have established
20 multiple acts of predicate fraud with respect to the
21 payments that are at issue here.

22 THE COURT: All right. Let me ask you,
23 Mr. Dolan, with respect to the wire fraud and mail
24 fraud, and I take it in this case primarily the wire
25 issues --

1 MR. DOLAN: Counsel -- Mr. Overstreet did not
2 address another argument that he made at some length in
3 his brief that we can't bring a RICO action because we
4 are alleging securities fraud, that is simply a
5 nonstarter, Your Honor. I think there is a reason why
6 he didn't mention it. We are not here today suing on
7 behalf of any Plaintiff with respect to securities
8 fraud. There might be other people that have those
9 claims, those eight other states have found, but we
10 are not here today on that, it is an entirely separate
11 issue.

12 I was also struck when Mr. Overstreet said that
13 Ms. Kern-Fuller is not alleged to be the mastermind, nor
14 I think he may have used the phrase, "the ultimate
15 boss." Neither of those are required under RICO, Your
16 Honor. She simply has to be a participant with some
17 degree of control over the conduct of the enterprise.

18 Your Honor, here is a salient point, which I
19 would like to just underscore, it is implicit in our
20 brief, but I don't know that I stated this directly: No
21 one can control the flow of money out of that IOLTA
22 account except Ms. Kern-Fuller and her law firm. She
23 is, indeed, the central banker for this entire scheme to
24 work. So, when she argues, through counsel, that she
25 doesn't participate in this, she has to, because she is

1 the only one who gets the money in from the investors,
2 she is the only one who sends the undisclosed
3 commissions to her colleagues, and she is the only one
4 who controls the flow of money, her and her law firm.
5 Not trying to demonize Ms. Kern-Fuller, but she is the
6 one who controls the flow of money out of the IOLTA
7 accounts to the individuals who are supposed to be
8 receiving them. And also, by the way, all the time
9 receiving a little bit of a fee from the individuals
10 with respect to each transaction.

11 There is a question that was raised by counsel
12 about causation. I have not read the *Slay* opinion, I
13 just pulled it up on my iPad, but I didn't have time to
14 read it yet, Your Honor. Let's think about this for
15 one second. The accusation is not that she was driving
16 down the street like *Ms. Palsgraf* or at a train station
17 which was accidentally involved in some kind of an
18 incident. The allegation is she is part of an
19 enterprise. She is responsible, even though she does
20 not directly do, she is responsible for the conduct of
21 her fellow members of the RICO enterprise.

22 The causation does not require her to walk down
23 the street and approach individuals, she is responsible
24 for the conduct of the entire enterprise as a whole, if
25 the Court ultimately finds, of course, that she is

1 remember all of them.

2 MR. MATTHEWS: What I often do is combine my two
3 points into one, I think it was in there.

4 THE COURT: Fair enough. Let me say this before
5 we close this morning. I want everybody involved in
6 this case to know that the subject matter of this case
7 is very troubling to the Court. There is a reason that
8 these statutes exist, and these statutes exist to keep
9 enterprising folks from separating veterans and
10 pensioners from their money.

11 Now, having said that, it is incumbent upon
12 the Plaintiff to plead adequate facts to constitute
13 plausible claims against each of these Defendants. And
14 at this point in the proceedings, all I am reviewing
15 the complaint for is to determine if that standard has
16 been met. Once we get past this, as you all know, and
17 you have had the opportunity to conduct whatever
18 discovery you deem reasonable or adequate during the
19 period you are allowed to do that, there will be other
20 motions that will be more fact-intensive based on what
21 has actually been borne out through that discovery
22 process. And some of these questions I feel certain we
23 will be revisiting at that time.

24 So, the two points I want to make sure
25 everybody understands is, number one: This Court takes

Exhibit B

- Sec.
 5313B. Prohibition on providing certain benefits with respect to persons who are fugitive felons.
 5314. Indebtedness offsets.
 5315. Interest and administrative cost charges on delinquent payments of certain amounts due the United States.
 5316. Authority to sue to collect certain debts.
 5317. Use of income information from other agencies: notice and verification.
 5317A. Use of income information from other agencies: independent verification required before termination or reduction of certain benefits and services.
 5318. Review of Social Security Administration death information.
 5319. Limitations on access to financial records.

AMENDMENTS

2008—Pub. L. 110-252, title I, §1303(a)(2), June 30, 2008, 122 Stat. 2327, added item 5302A.

2007—Pub. L. 110-157, title III, §301(b)(2), Dec. 26, 2007, 121 Stat. 1836, added item 5317A.

2003—Pub. L. 108-183, title VII, §708(c)(4)(B)(ii), Dec. 16, 2003, 117 Stat. 2675, substituted "Social Security Administration" for "Department of Health and Human Services" in item 5318.

2001—Pub. L. 107-103, title V, §505(a)(2), Dec. 27, 2001, 115 Stat. 996, added item 5313B.

1996—Pub. L. 104-275, title V, §502(b), Oct. 9, 1996, 110 Stat. 3341, added item 5313A.

1992—Pub. L. 102-568, title VI, §603(b)(2), Oct. 29, 1992, 106 Stat. 4343, added item 5319.

1991—Pub. L. 102-40, title IV, §402(c)(1), May 7, 1991, 105 Stat. 239, renumbered items 3101 to 3118 as 5301 to 5318, respectively.

1990—Pub. L. 101-508, title VIII, §§8051(b)(2), 8053(b)(2), Nov. 5, 1990, 104 Stat. 1388-351, 1388-353, added items 3117 and 3118.

1981—Pub. L. 97-66, title VI, §604(a)(2), Oct. 17, 1981, 95 Stat. 1036, added item 3103A.

1980—Pub. L. 96-466, title VI, §605(a)(2), Oct. 17, 1980, 94 Stat. 2211, added items 3114, 3115, and 3116.

Pub. L. 96-385, title V, §504(b), Oct. 7, 1980, 94 Stat. 1535, added item 3113.

1978—Pub. L. 95-588, title III, §305(b), Nov. 4, 1978, 92 Stat. 2508, added item 3112.

1972—Pub. L. 92-328, title II, §203, June 30, 1972, 86 Stat. 397, substituted "claims by the United States" for "overpayments" in item 3102.

1970—Pub. L. 91-376, §8(c), Aug. 12, 1970, 84 Stat. 790, added item 3111.

1962—Pub. L. 87-825, §4(b), Oct. 15, 1962, 76 Stat. 950, added item 3110.

§ 5301. Nonassignability and exempt status of benefits

(a)(1) Payments of benefits due or to become due under any law administered by the Secretary shall not be assignable except to the extent specifically authorized by law, and such payments made to, or on account of, a beneficiary shall be exempt from taxation, shall be exempt from the claim of creditors, and shall not be liable to attachment, levy, or seizure by or under any legal or equitable process whatever, either before or after receipt by the beneficiary. The preceding sentence shall not apply to claims of the United States arising under such laws nor shall the exemption therein contained as to taxation extend to any property purchased in part or wholly out of such payments. The provisions of this section shall not be construed to prohibit the assignment of insurance otherwise authorized under chapter 19 of this title, or of servicemen's indemnity.

(2) For the purposes of this subsection, in any case where a payee of an educational assistance allowance has designated the address of an attorney-in-fact as the payee's address for the purpose of receiving a benefit check and has also executed a power of attorney giving the attorney-in-fact authority to negotiate such benefit check, such action shall be deemed to be an assignment and is prohibited.

(3)(A) This paragraph is intended to clarify that, in any case where a beneficiary entitled to compensation, pension, or dependency and indemnity compensation enters into an agreement with another person under which agreement such other person acquires for consideration the right to receive such benefit by payment of such compensation, pension, or dependency and indemnity compensation, as the case may be, except as provided in subparagraph (B), and including deposit into a joint account from which such other person may make withdrawals, or otherwise, such agreement shall be deemed to be an assignment and is prohibited.

(B) Notwithstanding subparagraph (A), nothing in this paragraph is intended to prohibit a loan involving a beneficiary under the terms of which the beneficiary may use the benefit to repay such other person as long as each of the periodic payments made to repay such other person is separately and voluntarily executed by the beneficiary or is made by preauthorized electronic funds transfer pursuant to the Electronic Funds Transfers Act (15 U.S.C. 1693 et seq.).

(C) Any agreement or arrangement for collateral for security for an agreement that is prohibited under subparagraph (A) is also prohibited and is void from its inception.

(b) This section shall prohibit the collection by setoff or otherwise out of any benefits payable pursuant to any law administered by the Secretary and relating to veterans, their estates, or their dependents, of any claim of the United States or any agency thereof against (1) any person other than the indebted beneficiary or the beneficiary's estate; or (2) any beneficiary or the beneficiary's estate except amounts due the United States by such beneficiary or the beneficiary's estate by reason of overpayments or illegal payments made under such laws to such beneficiary or the beneficiary's estate or to the beneficiary's dependents as such. If the benefits referred to in the preceding sentence are insurance payable by reason of yearly renewable term insurance, United States Government life insurance, or National Service Life Insurance issued by the United States, the exemption provided in this section shall not apply to indebtedness existing against the particular insurance contract upon the maturity of which the claim is based, whether such indebtedness is in the form of liens to secure unpaid premiums or loans, or interest on such premiums or loans, or indebtedness arising from overpayments of dividends, refunds, loans, or other insurance benefits.

(c)(1) Notwithstanding any other provision of this section, the Secretary may, after receiving a request under paragraph (2) of this subsection relating to a veteran, collect by offset of any compensation or pension payable to the veteran under laws administered by the Secretary the

uncollected portion of the amount of any indebtedness associated with the veteran's participation in a plan prescribed in chapter 73 of title 10.

(2) If the Secretary concerned (as defined in section 101(5) of title 37) has tried under section 3711(a) of title 31 to collect an amount described in paragraph (1) of this subsection in the case of any veteran, has been unable to collect such amount, and has determined that the uncollected portion of such amount is not collectible from amounts payable by that Secretary to the veteran or that the veteran is not receiving any payment from that Secretary, that Secretary may request the Secretary to make collections in the case of such veteran as authorized in paragraph (1) of this subsection.

(3)(A) A collection authorized by paragraph (1) of this subsection shall be conducted in accordance with the procedures prescribed in section 3716 of title 31 for administrative offset collections made after attempts to collect claims under section 3711(a) of such title.

(B) For the purposes of subparagraph (A) of this paragraph, as used in the second sentence of section 3716(a) of title 31—

(i) the term "records of the agency" shall be considered to refer to the records of the department of the Secretary concerned; and

(ii) the term "agency" in clauses (3) and (4) shall be considered to refer to such department.

(4) Funds collected under this subsection shall be credited to the Department of Defense Military Retirement Fund under chapter 74 of title 10 or to the Retired Pay Account of the Coast Guard, as appropriate.

(d) Notwithstanding subsection (a) of this section, payments of benefits under laws administered by the Secretary shall not be exempt from levy under subchapter D of chapter 64 of the Internal Revenue Code of 1986 (26 U.S.C. 6331 et seq.).

(e) In the case of a person who—

(1) has been determined to be eligible to receive pension or compensation under laws administered by the Secretary but for the receipt by such person of pay pursuant to any provision of law providing retired or retirement pay to members or former members of the Armed Forces or commissioned officers of the National Oceanic and Atmospheric Administration or of the Public Health Service; and

(2) files a waiver of such pay in accordance with section 5305 of this title in the amount of such pension or compensation before the end of the one-year period beginning on the date such person is notified by the Secretary of such person's eligibility for such pension or compensation,

the retired or retirement pay of such person shall be exempt from taxation, as provided in subsection (a) of this section, in an amount equal to the amount of pension or compensation which would have been paid to such person but for the receipt by such person of such pay.

(Pub. L. 85-857, Sept. 2, 1958, 72 Stat. 1229, §3101; Pub. L. 94-502, title VII, §701, Oct. 15, 1976, 90 Stat. 2405; Pub. L. 95-479, title III, §301, Oct. 18, 1978, 92 Stat. 1564; Pub. L. 97-295, §4(74), Oct. 12, 1982, 96 Stat. 1310; Pub. L. 99-576, title V, §504,

title VII, §701(68), Oct. 28, 1986, 100 Stat. 3286, 3296; Pub. L. 101-189, div. A, title XIV, §1404(b)(2), Nov. 29, 1989, 103 Stat. 1586; Pub. L. 102-25, title VII, §705(c)(2), Apr. 6, 1991, 105 Stat. 120; renumbered §5301 and amended Pub. L. 102-40, title IV, §402(b)(1), (d)(1), May 7, 1991, 105 Stat. 238, 239; Pub. L. 102-54, §14(d)(2), June 13, 1991, 105 Stat. 285; Pub. L. 102-83, §4(a)(1), (2)(A)(vii), (b)(1), (2)(E), (4)(C), Aug. 6, 1991, 105 Stat. 403-405; Pub. L. 102-86, title V, §505(a), Aug. 14, 1991, 105 Stat. 426; Pub. L. 108-183, title VII, §702, Dec. 16, 2003, 117 Stat. 2671.)

REFERENCES IN TEXT

The Electronic Funds Transfers Act, referred to in subsec. (a)(3)(B), probably means the Electronic Funds Transfer Act, title IX of Pub. L. 90-321, as added by Pub. L. 95-630, title XX, §2001, Nov. 10, 1978, 92 Stat. 3728, as amended, which is classified generally to subchapter VI (§1693 et seq.) of chapter 41 of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 15 and Tables.

AMENDMENTS

2003—Subsec. (a). Pub. L. 108-183 inserted "(1)" after "(a)", designated last sentence as par. (2), and added par. (3).

1991—Pub. L. 102-40, §402(b)(1), renumbered section 3101 of this title as this section.

Subsecs. (a), (b). Pub. L. 102-83, §4(a)(1), substituted "administered by the Secretary" for "administered by the Veterans' Administration".

Subsec. (c)(1). Pub. L. 102-83, §4(b)(1), (2)(E), substituted "Secretary" for "Administrator".

Pub. L. 102-83, §4(a)(1), substituted "administered by the Secretary" for "administered by the Veterans' Administration".

Pub. L. 102-25 made a technical correction to Pub. L. 101-189. See 1989 Amendment note below.

Subsec. (c)(2). Pub. L. 102-83, §4(b)(4)(C), substituted "that Secretary" for second, third, and fourth references to "the Secretary".

Pub. L. 102-83, §4(b)(1), (2)(E), substituted "Secretary" for "Administrator" before "to make".

Subsec. (c)(4). Pub. L. 102-86 inserted before period at end "or to the Retired Pay Account of the Coast Guard, as appropriate".

Subsec. (d). Pub. L. 102-83, §4(a)(1), substituted "administered by the Secretary" for "administered by the Veterans' Administration".

Pub. L. 102-54 amended subsec. (d) as in effect immediately before enactment of Pub. L. 102-40 by substituting "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954".

Subsec. (e)(1). Pub. L. 102-83, §4(a)(1), substituted "administered by the Secretary" for "administered by the Veterans' Administration".

Subsec. (e)(2). Pub. L. 102-83, §4(a)(2)(A)(vii), substituted "Secretary" for "Veterans' Administration".

Pub. L. 102-40, §402(d)(1), substituted "5305" for "3105".

1989—Subsec. (c)(1). Pub. L. 101-189, as amended by Pub. L. 102-25, struck out "subchapter I or II of" after "plan prescribed in".

1986—Subsec. (a). Pub. L. 99-576, §701(68)(A), substituted "a" for "his or her" before "benefit check".

Subsec. (b). Pub. L. 99-576, §701(68)(B), substituted "the beneficiary's" for "his" in four places in first sentence.

Subsec. (c). Pub. L. 99-576, §504(2), added subsec. (c). Former subsec. (c) redesignated (d).

Subsecs. (d), (e). Pub. L. 99-576, §504(1), redesignated former subsecs. (c) and (d) as (d) and (e), respectively.

1982—Subsec. (c). Pub. L. 97-295 inserted "of this section" after "subsection (a)", and substituted "(26 U.S.C. 6331 et seq.)" for "(relating to seizure of property for collection of taxes)".

1978—Subsec. (d). Pub. L. 95-479 added subsec. (d).

1976—Subsec. (a). Pub. L. 94-502 inserted provision which prohibits, as an assignment, a payee of an educational assistance allowance from designating an attorney-in-fact's address as the payee's address for the purpose of receiving checks and benefits where the attorney-in-fact has also been given authority to negotiate the checks and benefits.

EFFECTIVE DATE OF 1991 AMENDMENT

Section 505(b) of Pub. L. 102-86 provided that: "The amendment made by subsection (a) [amending this section] shall apply with respect to funds collected after September 30, 1991."

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101-189 effective Apr. 1, 1992, see section 1404(b)(3) of Pub. L. 101-189, as amended, set out as a note under section 12731 of Title 10, Armed Forces.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-479 effective Oct. 1, 1978, see section 401 of Pub. L. 95-479, set out as a note under section 1114 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-502 effective Dec. 1, 1976, see section 703(c) of Pub. L. 94-502, set out as an Effective Date note under section 3693 of this title.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

UNDUE HARDSHIP CASES

Pub. L. 95-202, title III, §305(c), Nov. 23, 1977, 91 Stat. 1444, provided that Administrator could provide equitable relief to educational institutions and accredited correspondence schools which were in possession of a veteran's or eligible person's benefit check payable to the veteran or person and mailed to the institution or school for certain courses or lessons completed by the veteran or person at the institution or school before certain dates in 1977 and which were holding a power of attorney executed by the veteran or person before Dec. 1, 1976, authorizing negotiation of the check.

§ 5302. Waiver of recovery of claims by the United States

(a) There shall be no recovery of payments or overpayments (or any interest thereon) of any benefits under any of the laws administered by the Secretary whenever the Secretary determines that recovery would be against equity and good conscience, if an application for relief is made within 180 days from the date of notification of the indebtedness by the Secretary to the payee, or within such longer period as the Secretary determines is reasonable in a case in which the payee demonstrates to the satisfaction of the Secretary that such notification was not actually received by such payee within a reasonable period after such date. The Secretary shall include in the notification to the payee a statement of the right of the payee to submit an application for a waiver under this subsection and a description of the procedures for submitting the application.

(b) With respect to any loan guaranteed, insured, or made under chapter 37 of this title, the Secretary shall, except as provided in subsection (c) of this section, waive payment of an indebtedness to the Department by the veteran (as defined in sections 101, 3701, and 3702(a)(2)(C)(ii) of this title), or the veteran's spouse, following default and loss of the property, where the Secretary determines that collection of such indebtedness would be against equity and good conscience. An application for relief under this subsection must be made within one year after the date on which the veteran receives notice by certified mail with return receipt requested from the Secretary of the indebtedness. The Secretary shall include in the notification a statement of the right of the veteran to submit an application for a waiver under this subsection and a description of the procedures for submitting the application.

(c) The recovery of any payment or the collection of any indebtedness (or any interest thereon) may not be waived under this section if, in the Secretary's opinion, there exists in connection with the claim for such waiver an indication of fraud, misrepresentation or bad faith on the part of the person or persons having an interest in obtaining a waiver of such recovery or the collection of such indebtedness (or any interest thereon).

(d) No certifying or disbursing officer shall be liable for any amount paid to any person where the recovery of such amount is waived under subsection (a) or (b).

(e) Where the recovery of a payment or overpayment made from the National Service Life Insurance Fund or United States Government Life Insurance Fund is waived under this section, the fund from which the payment was made shall be reimbursed from the National Service Life Insurance appropriation or the military and naval insurance appropriation, as applicable.

(Pub. L. 85-857, Sept. 2, 1958, 72 Stat. 1230, §3102; Pub. L. 92-328, title II, §202(a), June 30, 1972, 86 Stat. 396; Pub. L. 96-466, title VI, §605(c)(3), Oct. 17, 1980, 94 Stat. 2211; Pub. L. 97-306, title IV, §407(a), Oct. 14, 1982, 96 Stat. 1445; Pub. L. 99-576, title VII, §701(69), Oct. 28, 1986, 100 Stat. 3296; Pub. L. 101-237, title III, §311, Dec. 18, 1989, 103 Stat. 2075; renumbered §5302, Pub. L. 102-40, title IV, §402(b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 102-54, §5, June 13, 1991, 105 Stat. 268; Pub. L. 102-83, §§4(a)(1), (3), (4), (b)(1), (2)(E), 5(c)(1), Aug. 6, 1991, 105 Stat. 403-406; Pub. L. 102-547, §12, Oct. 28, 1992, 106 Stat. 3645; Pub. L. 105-33, title VIII, §8033(b), Aug. 5, 1997, 111 Stat. 669.)

AMENDMENTS

1997—Subsec. (b). Pub. L. 105-33 inserted "with return receipt requested" after "certified mail".

1992—Subsecs. (a), (b). Pub. L. 102-547 made technical correction to directory language of Pub. L. 102-54, §5. See 1991 Amendment note below.

1991—Pub. L. 102-40 renumbered section 3102 of this title as this section.

Subsec. (a). Pub. L. 102-83, §4(b)(1), (2)(E), substituted "Secretary" for "Administrator" in four places.

Pub. L. 102-83, §4(a)(1), substituted "administered by the Secretary" for "administered by the Veterans' Administration".

Pub. L. 102-54, §5(1), as amended by Pub. L. 102-547, inserted at end "The Secretary shall include in the no-

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
602(a)	37:352 (1st sentence, less 31 words before provisos and less provisos).	June 21, 1950, ch. 342, §§ 2, 3 (less 1st 28 words), 64 Stat. 249; Aug. 7, 1959, Pub. L. 86-145, § 1, 73 Stat. 297.
602(b)	37:352 (last proviso of 1st sentence, 2d sentence, and last sentence).	
602(c)	37:352 (31 words before provisos of 1st sentence).	
602(d)	37:352 (1st proviso of 1st sentence).	
602(e)	37:352 (2d proviso of 1st sentence).	
602(f)	37:353 (less 1st 28 words).	

In subsection (a), the words “or persons” and “or officers” are omitted, since, under section 1 of title 1, “words importing the singular include and apply to several persons, parties, or things”. The words “to whom he delegates his authority under this section” are substituted for the words “as the respective Secretaries may designate for such purposes” to obviate confusion between persons “designated to receive payments and those who perform the Secretary’s functions under the section. The words “the necessity of” are omitted as surplusage.

In subsection (c), the words “or persons” are omitted for the reasons given in the preceding paragraph. The words “discharges the obligation” are substituted for the words “shall constitute a complete discharge”.

In subsection (d), the words “under the authority of” are omitted as surplusage.

In subsection (e), the words “have been” and “including a requirement” are omitted as surplusage. The words “or persons” are omitted for the reason stated in the explanation under subsection (a), above.

AMENDMENTS

1989—Subsec. (b)(5). Pub. L. 101-189 substituted “Department of Veterans Affairs” for “Veterans’ Administration”.

1980—Subsec. (b)(4). Pub. L. 96-513 substituted “Department of Health and Human Services” for “Department of Health, Education, and Welfare”.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96-513, set out as a note under section 101 of Title 10, Armed Forces.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 604 of this title.

§ 603. Regulations

The Secretary concerned and the Secretary of Veterans Affairs shall prescribe regulations necessary to carry out this chapter.

(Pub. L. 87-649, Sept. 7, 1962, 76 Stat. 484; Pub. L. 101-189, div. A, title XVI, § 1621(b)(2), Nov. 29, 1989, 103 Stat. 1604.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
603	37:353 (1st 28 words).	June 21, 1950, ch. 342, § 3 (1st 28 words), 64 Stat. 249; Aug. 7, 1959, Pub. L. 86-145, § 2, 73 Stat. 297.

The words “effectively” and “provisions of” are omitted as surplusage.

AMENDMENTS

1989—Pub. L. 101-189 substituted “Secretary of Veterans Affairs” for “Administrator of Veterans’ Affairs”.

§ 604. Determination of Secretary final

The determination as to the person authorized to receive a payment under section 602 of this title is final and is not subject to review by an official of the United States or a court.

(Pub. L. 87-649, Sept. 7, 1962, 76 Stat. 484; Pub. L. 89-718, § 66, Nov. 2, 1966, 80 Stat. 1123.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
604	37:354.	June 21, 1950, ch. 342, § 4, 64 Stat. 250.

The words “or persons” are omitted for the reasons stated in the revision note for section 602(a) of this revised title. The words “made by the respective secretaries, or by their duly designated subordinates” and the words “and conclusive” are omitted as surplusage.

AMENDMENTS

1966—Pub. L. 89-718 struck out “the” before “Secretary” in section catchline.

CHAPTER 13—ALLOTMENTS AND ASSIGNMENTS OF PAY

Sec.

701. Members of the Army, Navy, Air Force, and Marine Corps; contract surgeons.

[702. Repealed.]

703. Allotments: members of Coast Guard.

704. Allotments: officers of Public Health Service.

[705. Repealed.]

706. Allotments: commissioned officers of the National Oceanic and Atmospheric Administration.

707. Allotments: members of the National Guard.

AMENDMENTS

1990—Pub. L. 101-510, div. A, title XIV, § 1484(f)(1), Nov. 5, 1990, 104 Stat. 1717, revised chapter heading so as to appear in all capital letters.

1985—Pub. L. 99-145, title VI, § 683(a)(3), (b)(2), Nov. 8, 1985, 99 Stat. 665, 666, included reference to the Navy and Marine Corps in item 701, and struck out item 702 “Allotments: officers of Navy or Marine Corps” and item 705 “Assignments: enlisted members of naval service”.

1980—Pub. L. 96-513, title V, § 516(18)(C), Dec. 12, 1980, 94 Stat. 2939, substituted “Allotments: commissioned officers of the National Oceanic and Atmospheric Administration” for “Commissioned officers of Environmental Science Services Administration” in item 706.

1974—Pub. L. 93-289, § 11(c), May 24, 1974, 88 Stat. 173, added item 707.

1966—Pub. L. 89-718, § 49(a)(3), Nov. 2, 1966, 80 Stat. 1121, substituted “Environmental Science Services Administration for “Coast and Geodetic Survey” in item 706.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 42 section 665.

§ 701. Members of the Army, Navy, Air Force, and Marine Corps; contract surgeons

(a) Under regulations prescribed by the Secretary of the military department concerned, a commissioned officer of the Army, Navy, Air Force, or Marine Corps may transfer or assign his pay account, when due and payable.

(b) A contract surgeon, or contract dental surgeon, of the Army, Navy, or Air Force, on duty in Alaska, Hawaii, the Philippine Islands, or

Puerto Rico, may transfer or assign his pay account, when due and payable, under the regulations prescribed under subsection (a).

(c) An enlisted member of the Army, Navy, Air Force, or Marine Corps may not assign his pay, and if he does so, the assignment is void.

(d) Under regulations prescribed by the Secretary of Defense, a member of the Army, Navy, Air Force, or Marine Corps and a contract surgeon of the Army, Navy, or Air Force may make allotments from the pay of the member or surgeon for the purpose of supporting relatives or for any other purpose that the Secretary considers proper. Such allotments may include a maximum of six allotments considered to be discretionary under such regulations. For a member or former member entitled to retired or retainer pay, a maximum of six discretionary allotments authorized during active military service may be continued into retired status, and new discretionary allotments may be authorized so long as the total number of discretionary allotments does not exceed six.

(e) If an allotment made under subsection (d) is paid to the allottee before the disbursing officer receives a notice of discontinuance from the officer required by regulation to furnish the notice, the amount of the allotment shall be credited to the disbursing officer. If an allotment is erroneously paid because the officer required by regulation to so report failed to report the death of the allotter or any other fact that makes the allotment not payable, the amount of the payment not recovered from the allottee shall, if practicable, be collected by the Secretary concerned from the officer who failed to make the report.

(Pub. L. 87-649, Sept. 7, 1962, 76 Stat. 484; Pub. L. 89-718, § 67, Nov. 2, 1966, 80 Stat. 1123; Pub. L. 99-145, title VI, § 683(a)(1), (2), Nov. 8, 1985, 99 Stat. 665; Pub. L. 102-25, title VII, § 702(b)(1), (c), Apr. 6, 1991, 105 Stat. 117; Pub. L. 104-201, div. A, title VI, § 651(a), Sept. 23, 1996, 110 Stat. 2582.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
701(a)	10:3689(a).	[None.]
701(b)	10:3689(a).	[None.]
701(b)	10:3689(b).	[None.]
701(c)	10:3689(b).	[None.]
701(c)	10:3689(c).	[None.]
701(d)	10:3689(c).	[None.]
701(d)	10:3689(d).	[None.]
701(d)	10:3689(d).	[None.]

AMENDMENTS

1996—Subsecs. (d), (e). Pub. L. 104-201 added subsecs. (d) and (e) and struck out former subsec. (d) which read as follows: “The Secretary of the military department concerned, may allow a—

“(1) member of the Army, Navy, Air Force, or Marine Corps; or

“(2) contract surgeon of the Army, Navy, or Air Force;

to make allotments from his pay for the support of his relatives, or for any other purpose that the Secretary concerned considers proper. If an allotment made under this subsection is paid to the allottee before the disbursing officer receives a notice of discontinuance from the officer required by regulation to furnish the notice, the amount of the allotment shall be credited to the disbursing officer. If an allotment is erroneously paid

because the officer required by regulation to so report failed to report the death of the allotter or any other fact that makes the allotment not payable, the amount of the payment not recovered from the allottee shall, if practicable, be collected by the Secretary concerned, from the officer who failed to make the report.”

1991—Subsec. (b). Pub. L. 102-25 struck out “of this section” after “subsection (a)”.

1985—Pub. L. 99-145, § 683(a)(2), inserted reference to Navy and Marine Corps in section catchline.

Subsec. (a). Pub. L. 99-145, § 683(a)(1)(A), (C), substituted “Secretary of the military department concerned” for “Secretary of the Army or the Secretary of the Air Force, as the case may be” and “commissioned officer of the Army, Navy, Air Force, or Marine Corps” for “commissioned officer of the Army or the Air Force”.

Subsec. (b). Pub. L. 99-145, § 683(a)(1)(B), inserted reference to Navy.

Subsec. (c). Pub. L. 99-145, § 683(a)(1)(A), inserted reference to Navy and Marine Corps.

Subsec. (d). Pub. L. 99-145, § 683(a)(1)(C), substituted “Secretary of the military department concerned” for “Secretary of the Army or the Secretary of the Air Force, as the case may be”.

Subsec. (d)(1). Pub. L. 99-145, § 683(a)(1)(A), inserted reference to Navy and Marine Corps.

Subsec. (d)(2). Pub. L. 99-145, § 683(a)(1)(B), inserted reference to Navy.

1966—Subsec. (d). Pub. L. 89-718 substituted “Secretary concerned” for “Chief of Finance (in cases involving the Army) or by the Secretary of the Air Force” in provision for collection erroneously paid allotments.

REGULATIONS

Section 651(b) of Pub. L. 104-201 provided that: “The Secretaries of the military departments shall prescribe regulations under subsection (d) of section 701 of title 37, United States Code, as added by subsection (a), not later than October 1, 1997.”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 10 section 2882; title 14 section 686.

§ 702. Repealed. Pub. L. 99-145, title VI, § 683(b)(1), Nov. 8, 1985, 99 Stat. 665]

Section, Pub. L. 87-649, Sept. 7, 1962, 76 Stat. 484, authorized allotments by officers of Navy and Marine Corps for support of family or relatives, for personal savings, and for other purposes. See section 701 of this title.

§ 703. Allotments: members of Coast Guard

Members of the Coast Guard may, under regulations prescribed by the Secretary of Transportation, make allotments from their pay and allowances.

(Pub. L. 87-649, Sept. 7, 1962, 76 Stat. 484; Pub. L. 90-623, § 3(1), Oct. 22, 1968, 82 Stat. 1314.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
703	14:464.	[None.]

The words “members of the Coast Guard” are substituted for the words “officers and enlisted men”, since together they compose the entire membership.

AMENDMENTS

1968—Pub. L. 90-623 substituted “Secretary of Transportation” for “Secretary of the Treasury”.

Exhibit C

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE) THIRTEENTH JUDICIAL CIRCUIT
)
CARL ROBERT COLE,) Civil Action No. 2017-CP-23-00560
)
Plaintiff,)
)
v.)
)
RICHARD SIMPSON,) **FIRST SET OF**
) **INTERROGATORIES AND**
) **REQUESTS FOR PRODUCTION OF**
) **DOCUMENTS TO PLAINTIFF**
)
Defendant.)
)
)
)
)
)
)

TO: CANDY M. KERN-FULLER, ATTORNEY FOR PLAINTIFF

Pursuant to Rules 26 and 33 of the South Carolina Rules of Civil Procedure, Defendant Richard Simpson ("Veteran"), hereby propounds his First Set of Interrogatories and Requests for Production of Documents to Plaintiff Carl Robert Cole ("Plaintiff"), as set forth below, and requests that Plaintiff serve his responses in writing along with copies of the requested documents to counsel for Veteran within thirty (30) days of service hereof.

Pursuant to Rules 26 and 34 of the South Carolina Rules of Civil Procedure, Veteran hereby requests that the Plaintiff produce the original of all documents designated herein and allow Veteran or his counsel to inspect and copy said documents. Said production and inspection shall occur at the offices of Nelson Mullins Riley & Scarborough LLP, 104 South Main Street, Greenville, South Carolina, 29601, within thirty (30) days after service hereof unless an agreement to the contrary is reached, in writing, between the parties.

These Interrogatories and Requests for Production of Documents shall be of a continuing nature and Plaintiff's responses thereto shall be supplemented from time to time as required by Rule 26 of the South Carolina Rules of Civil Procedure.

INTRODUCTION

A. As used herein, the terms “Plaintiff,” “you,” or “your” refer without limitation to Plaintiff Carl Robert Cole, including all agents and representatives acting on the behalf of Plaintiff.

B. As used herein, “document” is used in its customary broad sense under the South Carolina Rules of Civil Procedure to mean every writing or record of every type and description that is in the possession, control, or custody of Plaintiff, including, without limitation, the following items, whether printed, computerized, taped, or recorded, filmed, reproduced by any process, written or produced by hand, and whether an original, master or copy, namely: agreements; communications, including intra-company communications and correspondence; cablegrams, radiograms and telegrams; notes; memoranda; computer discs and printouts; summaries, minutes and records of telephone conversations, meetings and conferences, including lists of persons attending meetings or conferences; summaries and records of personal conversations or interviews; books; manuals, publications; diaries; charts; financial records and/or summaries of financial records of any kind; photographs; reports and/or summaries of investigations and/or surveys; opinions and reports of consultants; reports and summaries of negotiations; drafts of originals or preliminary notes on, and marginal comments appearing on, any documents; other reports and records; any other paper or physical thing containing writing; every copy of such writing or record where the original is not in the possession, custody, or control of Plaintiff; every copy of every such writing or record where such copy contains any commentary or notation whatsoever that does not appear on the original.

C. The use of the word “document” also shall be deemed to include computer records or other records, including voice mail or “e-mail” records maintained in a computer or

other electronic storage medium, from which the record can be obtained, translated, if necessary, by Plaintiff, through detection devices into reasonably useable form. Such electronic records may include, but are not limited to, data, data files, data structures, and all other information produced and recorded by software (such as word processors, databases, spreadsheets, communications programs, and the like) and recorded in some fashion using a software program and maintained on disks and diskettes, hard disks, compact disks, CD ROMs, magnetic tape, smart phones or personal digital assistants ("PDAs"), and all other forms of digital recordings and electronic storage. In lieu of producing the "hard copy" of the document(s) sought, Plaintiff may produce copies of the data in electronic form, including appropriate software, if necessary to translate the record into a useable format.

D. As used herein, "date" shall mean the exact day, month, and year, if ascertainable, or, if not, the best approximation (including its relationship to other events).

E. "Person" shall mean any individual, firm, partnership, corporation, proprietorship, association, governmental body, or any other organization or entity.

F. When asked to "identify" any corporation, partnership, business entity or other "person," Plaintiff is requested to name the person or entity and provide at least sufficient information to enable the person or entity to be subpoenaed, including present or last known address and telephone number, occupation, job title, business affiliation and/or nature of business.

G. When used in conjunction with the term "document" or "documents," "identify" or "describe" shall mean to provide sufficient identifying information to enable the document to be subpoenaed, including its title and/or subject matter; its date; its author or person signing the document; and the name and address of its present custodian. When the identification and

description of documents are requested, Plaintiff may, in lieu of identifying and describing the documents, attach legible copies of the documents to the response to these Interrogatories, provided that each document is appropriately marked to identify the Interrogatory to which the document is responsive.

H. If in response to any Interrogatory or Request for Production, there is any response that is not fully given because of a claim of privilege or “work product,” describe the substance or content of the underlying information for which a privilege is asserted and the basis for the claim of privilege with sufficient detail to permit evaluation of the claim. You are required to answer the Interrogatory or respond to the Request for Production to the extent that it is not subject to the objection or privilege and state if any documents or information are being withheld because of the objection or privilege.

I. These Interrogatories and Requests for Production of Documents are deemed continuing to the extent provided by the South Carolina Rules of Civil Procedure. If after answering these Interrogatories, Plaintiff obtains or becomes aware of any further information responsive to these Interrogatories, Veteran requests that Plaintiff update and amend his responses herein.

FIRST SET OF INTERROGATORIES TO PLAINTIFF

1. State the names and addresses of all persons known to Plaintiff to have personal knowledge concerning the facts of this case and summarize for each person identified the facts known or believed to be known by such person.

2. Identify whether any written, audio or visual records, electronic statements or other statements (or recordings of any kind) have been taken or received by Plaintiff and/or Plaintiff’s attorneys, agents, or representatives at any time that relate to any of the issues raised

in Plaintiff's Complaint, and identify the party or individual making such statement, the substance of such statements, and who has possession of such statements.

3. Set forth a list of photographs, plats, sketches or other prepared documents in possession of the party that relate to any claim or defense in this case.

4. List the names and addresses of any expert witnesses that Plaintiff has contacted regarding this case, or who Plaintiff proposes to use as an expert witness at the trial of this case, and summarize the subject matter or area of inquiry about which the expert witness was contacted or will testify.

5. Set forth an itemized statement all damages that you are seeking in your Complaint, and describe in complete detail your method of calculating each amount that you claim, and the factual basis for each damage item.

6. Set forth a list of correspondence, emails, text messages, notes, reports, records, or other prepared documents in Plaintiff's possession concerning or in any way related to the subject matter of this litigation or the allegations of Plaintiff's Complaint.

7. Identify and describe in detail each time Plaintiff has been charged with and/or convicted of any crime. With respect to each charge or conviction, please identify:

- (a) The date of the charge or conviction;
- (b) The crime for which you were charged or convicted;
- (c) The number of days that you were incarcerated as a result of such charge or conviction; and
- (d) Any sentence imposed or fine for any conviction.

8. List all lawsuits that Plaintiff has been a party to, including but not limited to civil, criminal, domestic, or administrative cases, and for each case identify the case name, the Court or Agency where the lawsuit or action was filed or is pending, and how the lawsuit or administrative proceeding was resolved, or the current status of the lawsuit.

9. Identify by full name, address, and telephone number each person with whom Plaintiff has spoken or met with about the basis for or nature of Plaintiff's claims against Veteran and describe with particularity any and all such communications and the date on which they occurred.

10. Identify each and every specific provision(s) of any contract upon which your breach of contract claim is based.

11. Identify all individuals, entities, brokers and/or intermediaries who received and/or possessed directly or indirectly any portion of the money you claim to have paid in connection with the alleged contract at issue in this litigation, the date those funds were received or possessed, and the amount of those funds received or possessed.

12. Identify any and all agents or representatives of Veteran with respect to the alleged transaction at issue in the Complaint by name, date(s) during which the agent or representative acted on the behalf of Veteran, and the activities taken on behalf of Veteran.

13. Identify any documents that Plaintiff, or any person acting on Plaintiff's behalf, have reviewed, consulted or relied upon for the purpose of answering any of these Interrogatories.

14. Identify any other person or entity known by you to have entered any contract regarding the rights to any future payment streams relating in any way to veterans and/or disability benefits.

15. Identify any of the following or any representative of the following with whom you have ever communicated and provide the date and nature of each communication: Andrew Gamber, Mark Corbett, BAIC, Inc., VFG, Inc. f/k/a Voyager Financial Group, SoBell Ridge

Corp., Bradling Financial Group, Veterans Benefit Leverage, Performance Arbitrage Company, Upstate Law Group, Candy Kern-Fuller, and/or Richard Simpson.

16. Identify any and all future payment streams for an individual in which you have ever held an interest. This request specifically includes all transactions similar in any way to the alleged arrangement at issue in this litigation.

17. Identify all amounts paid in relation to the alleged contract and/or the allegations at issue in the complaint, specifying (1) recipient's name, (2) method of payment, (3) the account number and institution from which the funds were transferred, paid, or otherwise conveyed, (4) the sum paid or transferred, and (5) date of payment/transfer.

**FIRST REQUESTS FOR PRODUCTION OF
DOCUMENTS TO PLAINTIFF**

1. Produce all documents used or consulted by Plaintiff in responding to the Interrogatories served by Veteran.

2. Produce all documents supporting Plaintiff's claimed damages.

3. Any and all documents provided to or received from any individual or entity whom You have or may retain as an expert witness or whom you have ever considered retaining as an expert witness in this lawsuit including the complete file of any retained expert.

4. Produce each federal and state income tax return (including W-2 forms, schedules, and attachments) that Plaintiff has filed or intends to file from January 1, 2012 to present.

5. All records, including bank statements, canceled checks, or other documentation, of any payments or transfers of any kind made or received relating to the alleged contract and/or the allegations at issue in the complaint.

6. Any and all documents, exhibits, demonstratives, or other evidence you intend to introduce at any hearing, deposition, trial, or other proceeding in this matter.

7. Any and all documents relating to the claims or defenses in this litigation or the alleged contract at issue in this litigation.

8. All emails, photographs, videos, recordings, spreadsheets, text messages, letters, communications, or any other documents relating in any way to the alleged contract at issue in this litigation.

9. Any and all documents created, provided, or sent by or on the behalf of Veteran.

10. Any and all documents identified or referenced in Plaintiff's responses to any interrogatories served in this action.

11. Any and all documents or other materials--including communications such as emails or text messages--to, from, created by, or relating in any way to Andrew Gamber, Mark Corbett, BAIC, Inc., VFG, Inc. f/k/a Voyager Financial Group, SoBell Ridge Corp., Bradling Financial Group, Veterans Benefit Leverage, Performance Arbitrage Company, Richard Simpson, Upstate Law Group, Candy Kern-Fuller, and/or any agent, employee, representative, or relative of these individuals or entities.

12. Any and all communications or documents relating to any demand for payment from Andrew Gamber, Mark Corbett, BAIC, Inc., VFG, Inc. f/k/a Voyager Financial Group, SoBell Ridge Corp., Bradling Financial Group, Veterans Benefit Leverage, Performance Arbitrage Company, Richard Simpson, Upstate Law Group, and/or Candy Kern-Fuller.

13. Any and all documents and communications relating to any and all future payment streams for an individual in which you have ever held an interest. This request

specifically includes all transactions similar in any way to the alleged arrangement at issue in this litigation.

14. Any and all documents relating to any local, state, or federal benefits you received from January 1, 2013 to present.

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: 

William S. Brown

SC Bar No.064164

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104 South Main Street / Ninth Floor

Post Office Box 10084 (29603-0084)

Greenville, South Carolina 29601

Telephone: (864) 250-2300

Attorneys for Richard Simpson

Greenville, South Carolina

March 28, 2018

CERTIFICATE OF SERVICE


I, the undersigned Administrative Assistant of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for ***Richard Simpson***, do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by sending via electronic mail and United States Mail, postage prepaid, to the following address(es):

Pleadings:

**VETERAN'S FIRST SET OF INTERROGATORIES
AND REQUEST FOR PRODUCTION**

Counsel Served:

Candy M. Kern-Fuller
UPSTATE LAW GROUP, LLC
200 East Main Street
Easley, South Carolina 29640



Administrative Assistant

March 28, 2018

Exhibit D



David C. Dill
T 864.373.2224
david.dill@nelsonmullins.com

NELSON MULLINS RILEY & SCARBOROUGH LLP
ATTORNEYS AND COUNSELORS AT LAW

104 South Main Street | Ninth Floor
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May 4, 2018

Via Email

Upstate Law Group, LLC
Candy Kern-Fuller, Esq.
200 East Main Street
Easley, South Carolina 29640

Re: Carl Robert Cole v. Richard Simpson
Civil Action No. 2017-CP-23-00560

Dear Candy:

I write in regards to the failure of your client, Robert Cole, to respond to the discovery requests served on him in the above referenced case. Mr. Simpson served his first set of requests for production and interrogatories on Mr. Cole on March 28, 2018. Including additional days for service via mail, Mr. Cole's responses were due no later than May 2, 2018. He failed to raise any objections and made no response. Please deliver Mr. Cole's responses to my office by 12:00 PM on Wednesday, May 9, 2018.

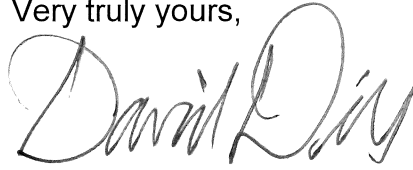
Further, we sent a deficiency letter to you last week regarding the failure of the Upstate Law Group to provide a privilege log for the materials it withheld from its recent subpoena responses on the basis of privilege. That letter included a deadline of May 1, 2018 for the Upstate Law Group to supplement its response. We have not received a response to this letter, privilege log, or any supplementation to your response. Please provide these immediately.

As I mentioned in my prior letter to you regarding Upstate Law Group's failure to comply with its subpoena obligations, we are willing to agree to reasonable accommodations, if needed. We are reluctant to seek the Court's relief, but if forced to do so we will file motions to compel and seek associated fees and costs from the Upstate Law Group and/or Mr. Cole.

Please help us avoid the need for court intervention on these discovery issues by providing the necessary responses.

May 4, 2018
Page 2

Very truly yours,

A handwritten signature in black ink, appearing to read "David Dill". The signature is fluid and cursive, with the first name "David" and last name "Dill" clearly distinguishable.

David C. Dill

DCD:ap

Exhibit E

From: Amy Plummer <amy@upstatelawgroup.com>
Sent: Friday, September 27, 2013 12:01 PM
To: 'richie'
Subject: RE: BAIC2433 Pension Annuity Sale

Dear Mr. Simpson:

It was nice talking to you too. I look forward to working with you over the next few years. I hope you have a great day.

Kindest regards,

Amy Plummer
Annuities Manager
Upstate Law Group
864-631-4738
864-855-3114
amy@upstatelawgroup.com

From: richie [mailto:richiekw@yahoo.com]
Sent: Friday, September 27, 2013 11:54 AM
To: amy@upstatelawgroup.com
Subject: Re: BAIC2433 Pension Annuity Sale

everything is correct--thank you ,nice talking with you!--Richie

From: Amy Plummer <amy@upstatelawgroup.com>
To: richiekw@yahoo.com
Sent: Friday, September 27, 2013 11:49 AM
Subject: BAIC2433 Pension Annuity Sale

Dear Mr. Simpson:

I am doing the pre-approval documentation currently and need to verify your email address, your phone number and your current mailing address as well as your permanent mailing address. Before we can finish this process it will be necessary for you to reply to this email and confirm your contact information.

We have the following documented:

Richard Simpson
2830 SW 31st Lane
Cape Coral, FL 33914

Phone: 239-233-6878

Do you have an alternate phone number? Further, please call me so that I can confirm your phone number and last four digits of your SSN. You can find my phone numbers and email address in the signature line of this email. I look forward to hearing from you soon. Have a great day.

Kindest personal regards,
Amy

Amy Plummer, SCED, R
Annuities Manager
Upstate Law Group, LLC
amy@upstatelawgroup.com
(864) 855-3114
(864) 855-3446 (facsimile)

CONFIDENTIALITY NOTE: THIS EMAIL WAS SENT FROM A LAW FIRM. IT MAY CONTAIN PRIVILEGED OR CONFIDENTIAL INFORMATION AND IS INTENDED SOLELY FOR THE USE OF THE PERSON(S) NAMED ABOVE OR THE PERSON(S) WHO IS THE INTENDED RECIPIENT OF THE MESSAGE. IF YOU ARE NOT AN INTENDED RECIPIENT OF THIS EMAIL, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION OR DUPLICATION OF THIS E-MAIL IS PROHIBITED AND THAT THERE SHALL BE NO WAIVER OF ANY PRIVILEGE OR CONFIDENCE BY YOUR RECEIPT OF THIS TRANSMISSION. IF YOU HAVE RECEIVED THIS E-MAIL IN ERROR, PLEASE NOTIFY US BY COLLECT TELEPHONE CALL OR FAX TO THE NUMBER INDICATED ABOVE.

Exhibit F



David C. Dill
T 864.373.2224
david.dill@nelsonmullins.com

NELSON MULLINS RILEY & SCARBOROUGH LLP
ATTORNEYS AND COUNSELORS AT LAW

104 South Main Street | Ninth Floor
Greenville, SC 29601
T 864.373.2300 F 864.232.2925
nelsonmullins.com

April 26, 2018

Via Email and U.S. Mail

Upstate Law Group, LLC
c/o Candy Kern-Fuller, registered agent
200 East Main Street
Easley, South Carolina 29640

Re: *Carl Robert Cole v. Richard Simpson*
Civil Action No. 2017-CP-23-00560
NMRS File No. 033999.01651

Dear Candy:

I hope that you enjoyed a pleasant trip through the Pacific Northwest. I have attempted to time this letter to coincide with your return so as to not interrupt your travel.

We received your April 16, 2018 subpoena response on behalf of Upstate Law Group LLC. In your response you objected to Mr. Simpson's March 30, 2018 subpoena on the grounds that certain responsive materials are privileged. You did not, however, provide a privilege log. As we discussed on the telephone prior to your response, you are obligated to provide a privilege log.

Please provide a privilege log by **5:00 PM on Tuesday, May 1, 2018**. If you are still traveling, please let me know and I will be happy to consider a reasonable extension. Nevertheless, it is imperative that we receive a privilege log as soon as possible.

Sincerely,

A handwritten signature in black ink that reads 'David Dill'.

David C. Dill

Exhibit G



David C. Dill
T 864.373.2224
david.dill@nelsonmullins.com

NELSON MULLINS RILEY & SCARBOROUGH LLP
ATTORNEYS AND COUNSELORS AT LAW

104 South Main Street | Ninth Floor
Greenville, SC 29601
T 864.373.2300 F 864.232.2925
nelsonmullins.com

March 30, 2018

Via Certified Mail
Return Receipt Requested
Delivery Restricted to Addressee

Upstate Law Group, LLC
Attention: Records Custodian
c/o Candy Kern-Fuller, registered agent
200 East Main Street
Easley, South Carolina 29640

Re: *Carl Robert Cole v. Richard Simpson*
Civil Action No. 2017-CP-23-00560
NMRS File No. 033999.01651

Dear Candy:

This firm represents Defendant Richard Simpson in the above-referenced lawsuit filed by Carl Robert Cole and pending in the Court of Common Pleas for Greenville County. Because your firm was involved in the alleged transaction(s) from which the claims in the case arise, in connection with this lawsuit, it is necessary that we obtain certain relevant documents in your possession or control as described more fully in **Exhibit A** to the enclosed subpoena.

Accordingly, pursuant to Rule 45 of the South Carolina Rules of Civil Procedure enclosed please find a subpoena *duces tecum* to **Upstate Law Group, LLC**. Please note that this subpoena covers all manner of documents, including documents stored electronically. Further, this subpoena does not differentiate between documents based on where they are housed or stored, therefore you should coordinate retrieval of all records in responding to this subpoena.

This is a subpoena for documents only. A personal appearance is not required by you; however, these documents must be received by this office on or before **April 16, 2018**, as indicated on the subpoena.

Also, enclosed is an Affidavit of Authenticity. We respectfully request that you sign the affidavit before a Notary Public and return the original along with the requested records. By signing the enclosed affidavit, you verify that you have provided all responsive records and that

Upstate Law Group, LLC
March 30, 2018
Page 2

they are copies of the documents maintained in your file during the normal course of business. Executing the affidavit may preclude the need for a subsequent records custodian deposition.

Please contact my paralegal, Laurie Jerome, at 864.373.2322 if you have any questions.

Please contact this office if you have any questions regarding this subpoena. Thank you for your cooperation.

With kind regards, I am

Very truly yours,

A handwritten signature in black ink, appearing to read "David Dill". The signature is stylized with a large, circular initial "D" and a cursive "avid" following it.

David C. Dill

DCD:lj2

Enclosures

cc: Candy M. Kern-Fuller, *Attorney for Plaintiff*

STATE OF SOUTH CAROLINA

ISSUED BY THE COMMON PLEAS COURT IN THE COUNTY OF PICKENS

CARL ROBERT COLE, Plaintiff

v.

SUBPOENA IN A CIVIL CASE

RICHARD SIMPSON, Defendant

Case Number: 2017-CP-23-00560

Pending in GREENVILLE County

TO: **UPSTATE LAW GROUP, LLC c/o Candy Kern-Fuller, registered agent, 200 East Main St., Easley SC 29640**☐ YOU ARE COMMANDED to appear in the above named court at the place, and time specified below to testify in the above case.

PLACE OF TESTIMONY	COURTROOM
	DATE AND TIME , AM

☐ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION	DATE AND TIME , AM
---------------------	--------------------

☒ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects in your possession, custody or control at the place, date and time specified below (list documents of objects:**See Exhibit A attached hereto.**

PLACE Nelson Mullins Riley & Scarborough, LLP, 104 South Main Street, Greenville SC 29601	DATE AND TIME, April 16, 2018 10:00 AM
---	--

☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES	DATE AND TIME , AM
----------	--------------------

ANY SUBPOENAED ORGANIZATION NOT A PARTY TO THIS IS HEREBY DIRECTED TO RULE 30(b)(6), SOUTH CAROLINA RULES OF CIVIL PROCEDURE, TO FILE A DESIGNATION WITH THE COURT SPECIFYING ONE OR MORE OFFICERS, DIRECTORS, OR MANAGING AGENTS, OR OTHER PERSONS WHO CONSENT TO TESTIFY ON ITS BEHALF, SHALL SET FORTH, FOR EACH PERSON DESIGNATED, THE MATTERS ON WHICH HE WILL TESTIFY OR PRODUCE DOCUMENTS OR THINGS. THE PERSON SO DESIGNATED TESTIFY AS TO MATTERS KNOWN OR REASONABLY AVAILABLE TO THE ORGANIZATION

I CERTIFY THAT THE SUBPOENA IS ISSUED IN COMPLIANCE WITH RULE 45(c)(1), AND THAT NOTICE AS REQUIRED BY RULE 45(b)(1) HAS BEEN GIVEN TO ALL PARTIES.



March 30, 2018

David C. Dill, Attorney for Defendant

Attorney/Issuing Officer's Signature

Date

Print Name

Indicate if Attorney for Plaintiff or Defendant

Attorney's Address and Telephone Number :

Nelson Mullins Riley & Scarborough, LLP, 104 South Main Street, Suite 900, Greenville SC 29601; Telephone: 864.250.2300

Clerk of Court/Issuing Officer's Signature

Date

Print Name

Pro Se Litigant's Name, Address and Telephone Number :

PROOF OF SERVICE

SERVED	DATE	FEES AND MILEAGE TO BE TENDERED TO WITNESS UPON DAILY ARRIVAL <input type="checkbox"/> YES <input type="checkbox"/> NO AMOUNT \$
	PLACE	
SERVED ON		MANNER OF SERVICE
SERVED BY		TITLE

DECLARATION OF SERVER

I certify that the foregoing information contained in the Proof of Service is true and correct.

Executed on _____

SIGNATURE OF SERVER

ADDRESS OF SERVER

Rule 45, South Carolina Rules of Civil Procedures, Parts (c) and (d):

(c) Protection of Persons Subject to Subpoenas.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2)(A) A person commanded to produce and permit inspection and copying of designated electronically stored information, books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial. A party or an attorney responsible for the issuance and service of a subpoena for production of books, papers and documents without a deposition shall provide to another party copies of documents so produced upon written request. The party requesting copies shall pay the reasonable costs of reproduction.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises—or to producing electronically stored information in the form or forms requested. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time in the court that issued the subpoena for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3)(A) On timely motion, the court by which a subpoena was issued, or regarding a subpoena commanding appearance at a deposition, or production or inspection directed to a non-party, the court in the county where the non-party resides, is employed or regularly transacts business in person, shall quash or modify the subpoena if it:

(i) fails to allow reasonable time for compliance; or

(ii) requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to travel more than 50 miles from the county where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held; or

(iii) requires disclosure of privileged or otherwise protected matter and no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) If a subpoena:

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

(iii) requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to incur substantial expense to travel from the county where that person resides, is employed or regularly transacts business in person, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) Duties in Responding to Subpoena.

(1)(A) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(B) If a subpoena does not specify the form or forms for producing electronically stored information, a person responding to a subpoena must produce the information in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) A person responding to a subpoena need not produce the same electronically stored information in more than one form.

(D) A person responding to a subpoena need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or to quash, the person from whom discovery is sought must show that the information sought is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(6)(B). The court may specify conditions for the discovery.

(2)(A) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

(B) If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, the receiving party must take reasonable steps to retrieve the information. The person who produced the information must preserve the information until the claim is resolved.

EXHIBIT A

Definitions and Instructions

1. **"Communications"**: Communications is subsumed within the term "document," but is occasionally used separately for emphasis. The term "communications" is used in its customary broad sense under the Federal Rules of Civil Procedure to mean every message sent from one person or entity to another person or entity. Communications includes drafts and electronically stored information. The term communication shall include, but is not limited to: e-mails, facsimiles, letters, memoranda, voice messages, writings memorializing or containing notes from telephone calls or in person meetings, or text messages.

2. **"Document"**: The term "document" is used in its customary broad sense under the Federal Rules of Civil Procedure to mean every writing or record of every type and description that are or were at any time in the possession, custody, or control of the subpoenaed entity **or its employees, agents, officers, representatives, designees, or anyone else working on its behalf.** Document includes any writing of any kind and the subpoenaed entity shall produce the original (or, in the absence thereof, a copy) and each non-identical copy or draft, as well as electronically stored information. The term "document" shall include, but is not limited to, writings, business records, minutes, financial statements, receipts, tax returns, regulatory filings, letters of intent, proposals, invoices, reports, projections, market studies, contracts, drawings, graphs, charts, photographs, video recordings, phone records, bank statements, electronically stored information, and other data compilations from which information can be retrieved, such as emails, text messages, and electronic data files.

3. **Express Inclusion of Electronic or Digital Documents**: The term "document" includes computer records or other records, including voice mail or e-mail records maintained on

a computer or other electronic storage medium, from which the records can be obtained, translated, if necessary, by the subpoenaed entity, through detection devices into reasonably useable form. Such electronic records may include, but are not limited to data, data files, data structures, and all other information produced and recorded by software (such as word processors, databases, spreadsheets, communications programs, and the like) and recorded in some fashion using a software program and maintained on disks and diskettes, hard disks, compact disks, CD ROMs, magnetic tape, personal digital assistants ("PDAs"), and all other forms of digital recordings and electronic storage. Defendant requests that any such records be produced in native format, with all original metadata.

4. Simpson: The term "Simpson" refers to Richard Simpson, the defendant in the lawsuit in which this subpoena is issued, *Carl Robert Cole v. Richard Simpson*, Civil Action No. 2017-CP-23-00560, filed in the Greenville County Court of Common Pleas, State of South Carolina.

5. Cole: The term "Cole" refers to Carl Robert "Bob" Cole, the plaintiff in the lawsuit in which this subpoena was issued, *Carl Robert Cole v. Richard Simpson*, Civil Action No. 2017-CP-23-00560, filed in the Greenville County Court of Common Pleas, State of South Carolina.

Documents Requested

1. Any and all communications of any kind with Simpson or any of his representatives or agents.
2. Any and all documents or communications of any kind relating in any way to Simpson or any of his representatives or agents.
3. Any and all documents or communications, including bank records, relating to any funds Upstate Law Group, LLC ever possessed, transferred, received, or paid in

relation to the alleged contract between Cole and Simpson. This excludes any payments by Cole to Upstate Law Group to represent him in the instant lawsuit.

4. Any and all documents or communications, including bank records, that in any way relate to the transfer of any funds connected to any alleged contract between Cole or any person or entity acting on Cole's behalf and Simpson. This request excludes any payments by Cole to Upstate Law Group to represent him in the instant lawsuit.

5. Any and all documents, including letters of representation and/or fee agreements, or communications that relate to legal services provided by Upstate Law Group, LLC to anyone in relation to any alleged contract between Cole and Simpson. This request excludes any privileged communications between Upstate Law Group and Cole in relation to the instant lawsuit, *Carl Robert Cole v. Richard Simpson*, Civil Action No. 2017-CP-23-00560, filed in the Greenville County Court of Common Pleas, State of South Carolina.

6. Any and all documents or communications that relate to all escrow services provided by Upstate Law Group, LLC in connection with any and all contracts for payments from an individual's future benefits stream.

7. Any and all documents or communications relating in any way to any of the following: Andrew Gamber, Mark Corbett, BAIC, Inc., VFG, Inc. f/k/a Voyager Financial Group, SoBell Ridge Corp., Bradling Financial Group, Veterans Benefit Leverage, Performance Arbitrage Company, and/or Simpson.

8. Any and all non-privileged documents or communications relating in any way to Cole.

STATE OF SOUTH CAROLINA)	
)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE)	THIRTEENTH JUDICIAL CIRCUIT
)	
CARL ROBERT COLE,)	Civil Action No. 2017-CP-23-00560
)	
Plaintiff,)	
)	
v.)	
)	AFFIDAVIT OF AUTHENTICITY
RICHARD SIMPSON,)	
)	
Defendant.)	
)	
)	
)	

PERSONALLY APPEARED BEFORE ME, _____, who being duly sworn, testifies:

1. My name is _____. I am employed by *Upstate Law Group, LLC* in the position of _____.

2. As the _____ for *Upstate Law Group, LLC*, I am authorized to certify records for *Upstate Law Group, LLC*.

3. I hereby certify that the attached documents, being provided to Nelson Mullins Riley & Scarborough, LLP pursuant to a Subpoena *duces tecum*, are true, correct and complete copies of the original documents from *Upstate Law Group, LLC*. I further certify that no documents have been omitted or altered in any way.

Signature

Print Name: _____

Sworn to before me this ____ day of _____, 2018.

Notary Public for the State of _____
My commission expires: _____

Exhibit H



UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
BURNETT PLAZA, SUITE 1900
801 CHERRY STREET, UNIT #18
FORT WORTH, TEXAS 76102-6882
PHONE: (817) 978-3821 FAX: (817) 978-2700

IN REPLYING
PLEASE QUOTE
FW-04114

January 26, 2017

VIA UPS and Facsimile (214-523-9077)

John R. Teakell
Law Office of John R. Teakell
2911 Turtle Creek Blvd., Suite 300
Dallas, TX 75219

Re: *In the Matter of SoBell Corp. [FW-04114]*

Dear Mr. Teakell,

We are in receipt of your letter dated January 20, 2017, which was sent to us via facsimile. As you know, we issued document subpoenas to your clients, Strategic Marketing Innovators, Inc. ("SMI") and Upstate Law Group, LLC ("ULG"), in the above-referenced matter on October 26, 2016, with a due date of November 9, 2016. To date, after one in-person meeting and numerous telephone calls, emails, and letters, your clients have not produced a single document called for by their respective subpoenas. To put all of this in perspective, let us recap our interaction:

- Kathleen Galloway and I first spoke with you on October 28, 2016. During that telephone conversation, you mentioned that you felt some of the requests in the subpoena might be too broad – but failed to specify any particular item. We stated that we were happy to talk with you about the specific requests in the subpoena, either in person or over the telephone, in an effort to resolve any questions or concerns you had. You concluded the call by stating that you needed to finalize your representation of SMI and ULG, and would then call us back.
- On November 9, 2016, you left Kathleen a voice mail stating that ULG and SMI had, in fact, retained you and that you wanted to discuss the subpoenas.
- Over the next three weeks, between November 10 and December 2, we repeatedly tried to reach you by telephone, leaving multiple messages on your answering machine. However, you did not return any of those messages. As a result, on December 2, 2016, we sent you an email asking you to contact us about the outstanding subpoenas. Finally, on December 5, 2016, you responded to us and offered to meet in person on December 7, and we agreed.
- During our meeting on December 7, you suggested that your clients would not produce any documents due to ongoing investigations by other regulatory agencies. We explained

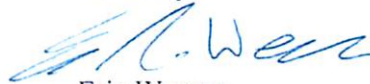
that the SEC's investigation was separate and distinct from any other ongoing investigation, and that the SEC subpoena requirements remained intact. You then offered to bring your clients in for an off-the-record proffer session. We responded that we would be happy to consider meeting with your clients either on or off the record, but only after we had received documents from them as called for by their respective subpoenas. We mentioned that we did not want the possibility of an in-person meeting with your clients to further delay their production of overdue, responsive documents. At that point, even though you had both subpoenas in your possession, you questioned whether the subpoenas had been properly served on your clients. We explained (and reminded you) that the service of SEC investigative subpoenas is complete upon delivery.

- At that point, we moved on to a discussion about the subpoenas, including some of the defined terms as well as the itemized document requests. You expressed confusion over the definitions for "Pension Asset" and "Pension Product." We responded that we had defined those terms in an effort to capture documents relevant to our investigation that we believed would be in the care, custody, or control of your clients. Your confusion persisted, as you claimed that your clients were not involved with "pensions." We attempted to explain that those two defined terms covered more than just pensions, and included products that were either described on your clients own websites or websites that mentioned your clients' names. We then discussed certain of the itemized document requests, and attempted to explain why those requests were relevant and likely in your clients' possession. At the end of our meeting, you stated that you would meet with your clients and get back to us within days.
- On December 15, you reached out to the staff by email and instead of explaining when and what documents your clients would produce, you stated only that your clients claimed not to "reference pensions or pension benefits on their websites," and asked whether we could direct you to sites that had such information. Although such information is not required to justify or support our subpoena, we sent you language pulled accurately from a website that mentioned the name of one of your clients and the phrase "qualifying pension plan." Although we did not disclose the name of the relevant website (as part of our non-public investigation), we stated that "if there is any semantic confusion about the terms defined in our subpoena, please let us know and we will do our best to clear it [up]."
- Following our meeting on December 7 and our brief email exchange on December 15, three weeks passed without a word (or documents) from you or your clients. This delay prompted my email of January 6, 2017, where I wrote: "It has been three weeks since our last correspondence, and we have not received any documents from your clients or communication from you concerning their production obligations. Please respond to this email and let us know when your clients plan to respond to our subpoenas (which required production almost two months ago)."
- Approximately two weeks later, at 5:24 p.m. on Friday, January 20, 2017, we received a letter from you sent by facsimile. In that letter, you failed to explain your clients' delay in producing even a single document called for by the subpoena. Instead, you again

asked for an “off-the-record proffer session with the clients” because it would give your clients an “incentive to go in and answer all questions” and “resolve the question about production of pension-related products...”

As we stated in our meeting on December 7, 2016, we are willing to entertain a meeting with your clients, on the record or off, but not until they have produced the documents called for by their respective subpoenas. As discussed, we are not requesting privileged material (just put such material on a log), and remain willing and able to discuss any legitimate questions you may have about what is called for by the subpoenas. However, if your clients persist in their dilatory response to the staff’s subpoenas, we will take all necessary steps to enforce compliance.

Sincerely,

A handwritten signature in blue ink, appearing to read "E. Werner", with a stylized flourish at the end.

Eric Werner
Assistant Regional Director